

**CITY OF MORGAN HILL  
JOINT SPECIAL AND REGULAR CITY COUNCIL,  
AND SPECIAL REDEVELOPMENT AGENCY,  
AND SPECIAL MORGAN HILL FINANCING AUTHORITY MEETING  
MINUTES – OCTOBER 6, 2004**

**CALL TO ORDER**

Mayor Pro Tempore/Vice-chairman/Vice-President Sellers called the special meeting to order at 5:32 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency/Commission Members Carr, Sellers, and Tate  
Late: Mayor/Chairman/President Kennedy (arrived at 5:35 p.m.)  
Absent: Council/Agency/Commission Member Chang

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency/Commission Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

***City Council and Redevelopment Agency Action***

**CLOSED SESSIONS:**

Mayor Pro Tempore/Vice-Chairman Sellers announced the below listed closed session items.

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	4

**2.**

**PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Legal Authority	Government Code 54957
Public Employee Performance Evaluation:	City Manager
Attendees:	City Council, City Manager

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor Pro Tempore/Vice-Chairman Sellers opened the Closed Session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor Pro Tempore/Vice-Chairman Sellers adjourned the meeting to Closed Session at 5:34 p.m.

Mayor/Chairman Kennedy joined the Council/Agency Board in closed session.

## **RECONVENE**

Mayor/Chairman/President Kennedy reconvened the meeting at 7:01 p.m.

## **CLOSED SESSION ANNOUNCEMENT**

Mayor/Chairman Kennedy announced that no reportable action was taken in closed session and that the Council/Agency Board would reconvene to closed session upon the conclusion of the meeting's agenda.

## **SILENT INVOCATION**

## **PLEDGE OF ALLEGIANCE**

At the invitation of Mayor/Chairman/President Kennedy, Rocke Garcia led the Pledge of Allegiance.

## **PROCLAMATIONS**

Mayor Kennedy presented a proclamation to Amy Molica and Perla Flores with Community Solutions recognizing October as *Domestic Violence Awareness Month*.

## **PRESENTATION**

The presentation by Cynthia York with the Health Trust on the necessity of obtaining flu shots was deferred to a future meeting date.

## **CITY COUNCIL REPORT**

Council Member Carr reported that the Finance & Audit Committee, consisting of Council Member Tate, City Treasurer Roorda and he, met last week. One of the items discussed by the Committee was Proposition 1A that will be on the November 2, 2004 ballot. He indicated that the Council asked that the Committee take a look at Proposition 1A to determine how it would affect the City's budget and the Five Year budget strategy that is supposed to bring the City's budget into structural balance. He stated that Proposition 1A is a result of a bipartisan agreement between the Governor and the State Legislature to provide some permanent protection and funding sources for local government. He said that when the State is in bad times and have a need to balance their budget, they frequently raid local government (e.g., cities, counties and special districts) from their funding. He indicated that Proposition 1A, over a number of years, will lock in the existing sales tax, property tax and the motor vehicle license fees that local governments receive as its financing source. In exchange, for the next two years, local governments will be shifting some of its funding to the State to balance the budget. In the outlying years, when the City's funding sources will be constitutionally protected, it will be vital to the City's effort to bring its budget into structural balance and to be able to provide necessary services. He stated that the Finance & Audit Committee supports the City's endorsement of this proposition. He noted that there is a consent calendar

item from the Legislative Subcommittee this evening that will have the similar recommendation. He stated that this coming Friday, October 8, Ann Sobrato High School will be celebrating its first homecoming celebration with a football game being held at the Live Oak High School field at 6:00 p.m. Live Oak High School will be celebrating its homecoming on Friday, October 15.

### **CITY MANAGER REPORT**

City Manager Tewes reported that the Council has asked that he report on monthly testing of the City's water supply wells for the chemical perchlorate. He was pleased to report that this month's testing showed no detectible levels of perchlorate in the City's wells. This is consistent with the Council's direction that the City provide drinking water to the community that meets or exceeds the relevant State and Federal standards.

### **CITY ATTORNEY REPORT**

Acting City Attorney McClure stated that he did not have a City Attorney's report to present this evening.

### **OTHER REPORTS**

None.

### **PUBLIC COMMENT**

Mayor/Chairman/President Kennedy opened the floor to public comment for items not appearing on this evening's agenda.

Ms. Barker indicated that individuals are aware that Governor Schwarzenegger has signed Senate Bill 1161, the library bill that will be on the June 2006 ballot. She recommended that the City proceed with its library on schedule without waiting for the bill. It was her belief that if the City waited for this bill, it would mean that the community would not have a new library before the year 2009 or 2010. She acknowledged that the City is waiting for the October 29, 2004 date to hear whether it was successful in receiving library funding.

City Manager Tewes stated that staff will be presenting a library report to the Council on October 27. He said that staff has been advised that the State Library Board will be meeting on November 29 and 30 at which time staff expects to hear the results of the round 3 library bond application.

Ms. Barker stated her support of waiting to hear the results of the City's round 3 application but not waiting for any actions further than the November 29/30 date.

Mayor Kennedy stated that a wonderful event was experienced last Thursday evening at the City's aquatics center where three Olympic athletes were in attendance: Michael Phelps, Ian Crocker and

Lenny Creselberg. These three Olympians gave an awesome performance. He estimated that there were over 1,200 individuals attending this event. He stated that the Olympians were incredible with the youths and families in attendance, provided swim demonstrations and participated in a relay with local swim teams. He said that he was pleased that the City was able to invite and get the Olympians to come to the City's aquatics center.

No further comments were offered.

City Manager Tewes requested that the Council consider both the consent calendar of the regular and special meeting that has been called to order earlier this evening.

## ***City Council Action***

### **CONSENT CALENDAR:**

Mayor Pro Tempore Sellers requested that item 2 be removed from the Consent Calendar.

**Action:** *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **Approved** Consent Calendar Items 1, 3-15 as follows:*

1. **TEMPORARY APPOINTMENT TO SOCCER SUBCOMMITTEE**  
***Action:** **Appointed** Mayor Dennis Kennedy as a Temporary Replacement for Council Member Hedy Chang on the Soccer Subcommittee.*
3. **EMPLOYMENT AGREEMENT WITH THE CITY ATTORNEY**  
***Action:** **Approved** the Second Amendment to the Employment Agreement with the City Attorney, Extending the Term of the Agreement to September 1, 2006.*
4. **SECOND AMENDMENT TO AGREEMENT WITH THE STROMBOTNE LAW FIRM**  
***Action:** **Authorized** the City Manager to Execute a Second Amendment to Agreement with the Strombotne Law Firm.*
5. **SECOND AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF JORGENSEN, SIEGEL, McCLURE & FLEGEL, LLP**  
***Action:** **Authorized** the City Manager to Execute a Second Amendment to Agreement with the Law Firm of Jorgenson, Siegel, McClure & Flegel, LLP.*

6. **APPROVAL OF REIMBURSEMENT AGREEMENT WITH PRAVIN PATEL FOR 16995 CONDIT ROAD**  
*Action: **Approved** an Appropriation of \$41,313 from the Current Year Unappropriated Measure C – Capital Improvement Project Fund Balance for Reimbursement of Installation of Curb and Gutter, Sidewalk, Street Pavement, Striping, and Electroliers along the Southeast Frontage of 16995 Condit Road; and 2) **Authorized** the City Manager to Execute the Reimbursement Agreement on Behalf of the City, Subject to Review and Approval by the City Attorney.*
7. **REUSE GRANT AUTHORIZATION**  
*Action: 1) **Adopted** Resolution No. 5847, Authorizing the Submittal of Reuse Grant; and 2) **Authorized** the City Manager to Execute all Necessary Documents; Including, but not Limited to, Applications, Agreements Subject to Review and Approval of City Attorney, Amendments, and Payment Requests to Secure Grant Funds and to Implement and Carry Out the Purposes Specified in the Grant.*
8. **APPROVAL OF AMENDMENT TO PROFESSIONAL SERVICES CONTRACT FOR THE BUTTERFIELD BOULEVARD NORTH CONNECTION FEASIBILITY STUDY**  
*Action: **Authorized** the City Manager to Execute an Amendment in the Amount of \$11,120 to the City's Professional Services Agreement with Fehr and Peers to Study Alignment and Rail Crossing Alternatives for the Northerly Segment of Butterfield Boulevard.*
9. **APPROVAL OF SUBDIVISION IMPROVEMENT AGREEMENT WITH MORGAN HILL DEVELOPMENT PARTNERS, L.P. – SUTTER PLACE, APN: 726-25-012 & 029**  
*Action: 1) **Approved** the Subdivision Improvement Agreement; and 2) **Authorized** the City Manager to Sign the Agreement on Behalf of the City with Morgan Hill Development Partners, L.P., Digital Drive (APN: 726-25-012 & 029).*
10. **RECISSION OF WATER SUPPLY EMERGENCY RESOLUTION AND STATUS OF PERCHLORATE REMOVAL PLANTS**  
*Action: 1) **Adopted** Resolution No. 5848, Ending the Water Supply Emergency; and 2) **Accepted** the Status Report on Perchlorate Removal Plants.*
11. **ADOPT ORDINANCE NO. 1695, NEW SERIES**  
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1695, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE ZONING DESIGNATION FROM ML, LIGHT INDUSTRIAL TO PLANNED UNIT DEVELOPMENT FOR A 7.72-ACRE PARCEL LOCATED AT THE NORTHWEST CORNER OF COCHRANE ROAD AND MADRONE PARKWAY IN THE MADRONE BUSINESS PARK (APN 726-33-028)(ZA-04-11: COCHRANE – TBI)***

**12. ADOPT ORDINANCE NO. 1696, NEW SERIES**

***Action: Waived the Reading, and Adopted Ordinance No. 1696, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE ZONING DESIGNATION FROM PUD, RESEARCH AND DEVELOPMENT/MANUFACTURING TO PUD, R3 MEDIUM DENSITY RESIDENTIAL FOR TWO PARCELS TOTALING 15.78 ACRES IN SIZE, LOCATED AT THE SOUTHEAST CORNER OF COCHRANE ROAD AND MONTEREY ROAD IN THE MORGAN HILL RANCH BUSINESS PARK (APNs 726-25-076 & -077) (ZA-04-09: BUTTERFIELD – SOUTH VALLEY DEVELOPERS).***

**13. ADOPT ORDINANCE NO. 1697, NEW SERIES**

***Action: Waived the Reading, and Adopted Ordinance No. 1697, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A SET OF DEVELOPMENT STANDARDS AND ARCHITECTURAL GUIDELINES FOR THE DE PAUL (FORMERLY SAINT LOUISE) HEALTH CENTER. (APNs 728-031-005, 006, 012 & 013) (ZA-04-02: COCHRANE-ASSISTED LIVING CENTER).***

**14. ADOPT ORDINANCE NO. 1698, NEW SERIES**

***Action: Waived the Reading, and Adopted Ordinance No. 1698, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT WITH DAN GAMEL, INC. FOR THE EXPANSION OF DAN GAMEL'S MORGAN HILL RECREATIONAL VEHICLE (RV) CENTER.***

**15. RE-BUDGETING 2003-2004 PROJECTS/PROGRAMS**

***Action: Approved the Re-budgeting of 2003-2004 Project/Program Costs in the 2004-2005 Budget.***

**2. REPORT OF THE LEGISLATIVE SUBCOMMITTEE**

Mayor Pro Tempore Sellers confirmed that the Finance & Audit Committee supports Propositions 1A in this fall's ballot and recommends citizen support. Passage of Proposition 1A would provide stability to the City's revenue that is vital and will make it difficult for the State to take funds from local government to balance the State's budget in the future. He stated that the Committee also recommends Council support of Proposition 59 as this proposition would require that cities adhere to higher standards.

Mayor Kennedy stated that it was his understanding that Proposition 65 was the original local government initiative measure that was brought forward to protect local government revenues,

especially for public safety purposes. With Proposition 1A being jointly agreed to by local governments consisting of counties, cities and special districts, Proposition 65 is no longer necessary. It was his understanding that voting yes on Proposition 1A would be the recommended vote.

Council Member Carr clarified that Proposition 65 was brought forward by cities, counties and special districts where Proposition 1A is an effort by the Governor and the Legislature in agreeing with cities, counties and special districts on a mechanism similar to Proposition 65. He clarified that it is being recommended that the City support Proposition 1A.

Mayor Pro Tempore Sellers stated that the League of California Cities took a position against Proposition 65 while others have stated that both propositions should be supported. He said that the Legislative Subcommittee is recommending that the City take a position on Proposition 1A and not make a recommendation on Proposition 65.

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Chang absent, **Supported** Recommendation of Proposition 1A and Proposition 59 on the November 2, 2004 Statewide Ballot.*

## ***City Council and Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:** *On a motion by Council/Agency Member Tate and seconded by Mayor Pro Tempore/Vice-chairman Sellers, the City Council/Agency Board, on a 4-0 vote with Council Member Chang absent, **Approved** Consent Calendar Items 16 and 17, as follows:*

16. **JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF SEPTEMBER 15, 2004**

**Action:** ***Approved** the Minutes as Written.*

17. **JOINT SPECIAL AND REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES OF SEPTEMBER 22, 2004**

**Action:** ***Approved** the Minutes as Written.*

**Action:** *As the Council has a policy of considering public hearing items on or after 7:30 p.m., the Council agreed to consider item 20 at this time.*

## ***City Council Action***

### **OTHER BUSINESS:**

#### **20. LIVESTOCK REGULATIONS**

City Manager Tewes presented the staff report, indicating that the City has long standing regulations that indicate that certain livestock are limited in residential and commercial zoning districts to only those properties that exceed one acre in size. He stated that there are limitations on the number of such animals (e.g., goats, horses) that may be housed on such property not exceeding two per acre as a matter of right. Further, the code provides that if a property owner wishes to exceed, this number, they need to apply for a special permit to be granted by the Council upon the finding that these additional animals would not adversely impact surrounding neighborhoods. He indicated that the Mayor has asked that the Council consider amending the animal ordinance to increase the number of animals to be allowed by right. Should the Council agree to amend the ordinance, he stated that it would be procedurally correct to refer this matter to the Planning Commission whose recommendations the Council needs before amending the zoning codes.

Mayor Kennedy stated that he spoke with Mr. Dutra during the code enforcement actions process that was initiated by complaints from surrounding residents. He indicated that he also spoke with the City's code enforcement officer. He stated that one of the concerns that Mr. Dutra raised was the high cost of going through the process of obtaining a special permit for additional livestock, noting that the parcel consists of approximately five acres. He said that he was told that a special permit would cost \$3,000-\$4,000 to go through the process as the special permit would need to be reviewed by staff, the Planning Commission, and the City Council. He felt that this fee was an excessive burden to an individual since citizens of Morgan Hill pride themselves for living in a rural community where there are a lot of animals and open space. These are the reasons he brought this matter forward for Council consideration.

City Manager Tewes indicated that City staff does not have a recollection of ever receiving an application for a special permit to exceed the number of livestock beyond two. Therefore, the City does not have an established fee. He said that the \$3,000 fee is the approximate cost to process a temporary use permit. He stated that in the memorandum to the Council, staff indicates that it would be the City's practice to collect a deposit and process the application on a time and material basis. He acknowledged that there would be costs associated with processing the special permit application.

Mayor Kennedy opened the floor to public comment.

Natasha Wist stated that she resides across the street from Mr. Dutra. She did not know of any neighbors who surround her who are opposed to Mr. Dutra having animals. However, she finds it interesting that the City has spent time and tax payers' money to hound her elderly neighbor, Mrs. Humphrey, whose late husband built their modest home on acreage they acquired 50 years ago. She said that staff has found time to harass her neighbor, Mr. Dutra, because of seven pet goats on a five acre parcel across the street from her. At the same time, the neighborhood finds that corporate interests in the name of a car



dealership is quietly convincing the Council to change the general plan and do away with the proscribed buffer zone between single family homes and the commercial zone. She stated that a street connecting the commercial zone to the residential neighborhood is also planned. She felt that this would destroy the atmosphere and the environment of Diana Avenue. She stated her support of the seven goats, two horses and mules as they gave the neighborhood children a pleasant experience of rural living before they were evicted.

Dion Bracco informed the Council that he is a friend of Mr. Dutra. He stated that the City has surrounded Mr. Dutra's five acres by large million dollar homes. He did not believe that the City's regulations were in line with that of the County. He stated that it was his belief that the County allows two large animals per acre. He said that neighborhood children get their own petting zoo. He did not believe that it was fair that a few angry/spiteful neighbors who moved into Morgan Hill from other areas want to change the neighborhood to suit their needs. He requested that the Council take this situation into consideration.

Frances Dutra, daughter of Mr. Dutra, indicated that it was her belief that a neighbor to the rear is part of the effort to remove the animals because the neighbor wanted to build a pool for her children. The neighbor was informed that the property was not for sale because the family does not own the property. She felt that the neighbor had a problem with the land not being sold to them, and therefore complained about the animals. She felt that the neighbors have taken a part of her family away. She felt that the complaint arose from the greed of a couple of neighbors to add more value to their property. She stated that she would like to have her animals back.

No further comments were offered.

Mayor Kennedy indicated that it would be his recommendation to forward this item to the Planning Commission so that they can hear the issues and return to the Council with a recommendation. The Planning Commission could recommend how to implement the animal ordinance. He further recommended that the Planning Commission take a look at the County's ordinance to see if it makes sense for the City of Morgan Hill to be consistent with their ordinance and to perhaps include a grandfather provision for situations similar to Mr. Dutra's case where animals may have been in a location for many years.

Council Member Tate recommended that the Planning Commission return to the Council with an implementation plan that would allow Mr. Dutra to get to where he was with his animals. He felt that there should be a provision in the ordinance that would allow an individual to have more animals, the larger the parcel.

Council Member Carr requested clarification as to whether the Mayor was requesting that the Planning Commission recommend that a property owner, by right, be allowed to have a larger number of animals on a larger piece of property without the need for permits. He stated that he would support a grandfather clause, especially if the City was growing around a property owner who had animals for a long time. However, it was his hope that the Council instructs the Planning Commission to create a mechanism

where the City can look at individual situations. He noted that Mr. Dutra is renting the property from someone else and that he appears to be a good neighbor. However, he did not believe that this would always be the case. By granting an individual the right to keep a lot of animals in the middle of Morgan Hill may result in being surrounded by neighbors who will be upset with a property owner who does not take care of their animals, resulting in the City being placed in a difficult position. He would like the Council to ask the Planning Commission to return with a recommendation where the City would look at individual circumstances, through a permit process. If it is a fee issue that is a problem with the permit process, he recommended that the Council look at this as the issue and not automatically assume that the City should give the right to allow several animals on a small or large piece of property. This will allow the City to have some control over the permit. When the City has a good neighbor, the City can authorize the additional animals and when there are bad neighbors, the City has the ability to deny the extra animals.

Council Member Sellers felt that it made sense for the Council to look at this particular situation as it is unique. He stated that he was contacted by Mr. Dutra as well. He indicated that he is the only individual on the Council who has lived in the City limits and had large animals when he was younger. When he was younger, everyone who had large animals understood that no one would come out and give families a hard time about the large animals. If there was a problem with a neighbor, the situation had to be dealt with. He felt that this was a difficult situation and that one of the problems being experienced is that the Council does not know who complained about the situation. If this is a situation that resulted in a complaint by a vindictive individual, it is one thing. However, if it is a lot of individuals who have concerns about the number of large animals, it would be a different situation. He stated that he would like to help Mr. Dutra in this particular situation as it is a unique situation. However, he did not believe that it made sense to change the zoning on the property. He noted that the property under discussion is located in the middle of town and has been a part of Morgan Hill since its incorporation. He said that the rural atmosphere that everyone likes about Morgan Hill is changing and that this needs to be understood. He did not recommend changing the ordinance similar to that of the County because Morgan Hill is a different place. He said that he would like to hear from the Planning Commission on how the City can help in this particular situation (e.g., grandfather the animals). He did not believe that changing the ordinance makes sense because the City is heading in the opposite direction and would be creating problems for future councils.

Council Member Tate stated that he is bothered by the fact that the City is not addressing the number of large animals that would be allowed based on lot size. He did not believe that the lot ratio per large animals is addressed in the current animal ordinance and felt that it should be addressed so that the City does not have to review every single situation.

Mayor Pro Tempore Sellers understood the concern as expressed by Council Member Tate and felt that addressing the issue by grandfathering the situation would be more appropriate. He said that the City would be buying trouble if the animal ordinance is changed. He felt that grandfathering the use of a parcel with a number of large animals would afford greater latitude.

Mayor Kennedy said that it was his belief that it would be appropriate to allow additional animals on larger parcels, even if located within the City limits. He recommended that the Council forward this matter to the Planning Commission. The Planning Commission can take a look at the animal ordinance, hear from the public, and look at ordinances from other cities as well as the County's ordinance. The Planning Commission to return to the Council with a recommendation(s).

Council Member Carr clarified that he did not believe that it was a bad idea for the Planning Commission to have the discussion. He said that the only way the City finds out problems exist with ordinances is when a situation similar to this arises and that it was appropriate to look at the ordinance(s). He felt that review by the Planning Commission and receipt of public testimony will result in a good discussion by the Council in the future. He felt that the Council needs to be clear that what it is talking about is a unique situation that the City wants to remedy.

Mayor Kennedy said that it was his belief that the Council agrees that Mr. Dutra's issue should be grandfathered. However, he felt that the Council was divided on the question about having a graduating scale of the number or large animals that would be allowed based on parcel size.

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Kennedy, the City Council, on a 4-0 vote with Council Member Chang absent, **Directed** staff to refer the animal ordinance to the Planning Commission.*

## ***City Council Action***

### **PUBLIC HEARINGS:**

#### **18.    DEVELOPMENT AGREEMENT, DA-04-03: DeWITT-LATALA – Ordinance No. 1699, New Series**

Planning Manager Rowe presented the staff report, indicating that the development agreement is for the subdivision of a 1.45 acre parcel located on the west side of DeWitt Avenue, south of West Dunne Avenue.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **Waived** the Reading in Full of the Development Agreement Ordinance No. 1699, New Series.*

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No. 1699, New Series, by Title only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA-04-03: DEWITT-LATALA FOR APPLICATION MMP-03-06: DEWITT-LATALA (APN 773-08-012), by the following***

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*roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Chang.*

**19. ZONING AMENDMENT, ZAA-03-13: CITY OF MORGAN HILL – ATTACHED HOUSING ZONING TEXT – Ordinance No. 1700, New Series**

Planning Manager Rowe presented the staff report, stating that the Council adopted Ordinance No. 1641, New Series, in November 2003. This ordinance allowed for attached units to be separated a minimum of three and a maximum of six feet to address the concern of the continued high cost of obtaining construction liability insurance for attached housing. The Council has received testimony indicating that there is still a need for this ordinance. He informed the Council that the Planning Commission is recommending a two-year extension and amendment to Section 11 of Ordinance No. 1641. The amendment would allow a fence to be centered between the two homes, creating two, three foot side yards. He clarified that the buildings would be constructed six feet apart and would not require a fire rated wall nor would the fence located three feet from both homes.

Mayor Kennedy opened the public hearing.

Scott Schilling informed the Council that developers appreciated the opportunity to work with staff and the Planning Commission in the desire to work out difficult issues associated with Ordinance No. 1641. He said that the three foot side yard area has a length of 15 feet and that there is an access door from the garage going into the three foot side yard area. This provides good access in and out of the area, opening up to five foot side yards beyond the garage door, typical to a normal residential situation. He clarified that if a building is beyond five feet, the one hour construction is not required. Through the Measure P competition, there are significant fire rating materials being proposed without any additional construction requirements on the walls and the roofing elements of the units. He indicated that developers are requesting Council consideration on this item this evening.

No further comments being offered, the public hearing was closed.

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Chang absent, **Waived** the Reading in Full of the Zoning Amendment Ordinance No. 1700, New Series.*

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1700, New Series by Title only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL EXTENDING AND MODIFYING ORDINANCE NO. 1641, NEW SERIES, ALLOWING MODIFIED SETBACK DWELLINGS IN RESIDENTIAL PROJECTS DUE TO CONSTRUCTION LIABILITY INSURANCE ISSUES SURROUNDING OWNERSHIP ATTACHED HOUSING**, by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Chang.*

## ***City Council and Redevelopment Agency Action***

### **OTHER BUSINESS:**

#### **21. LEASE WITH THE CALIFORNIA YOUTH SOCCER ASSOCIATION (CYSA)**

Business Assistance and Housing Services Toy presented the staff, indicating that this is potential lease extension with the CYSA. He stated that the lease expires at the end of December 2004 and that staff would like Council/Agency direction on how to proceed with the lease extension negotiations. He indicated that staff would like direction on three issues: 1) would the City want to extend the lease and if so, for how long. 2) Direction on the flexibility and negotiations with CYSA on the City's proposal to develop a parking lot on the soccer complex to serve as overflow parking for the aquatics center. This would result in the loss of one soccer field. 3) Confirm that the terms of the existing lease are acceptable to the Agency. He informed the Council/Agency Board that CYSA has indicated that operationally, any lease extension needs to be at least 10-months. The Parks & Recreation Commission will be reporting back to the Council in November 2004 about its phasing plan for the sports complex. If the Council/Agency approves the phasing plan, the City can begin construction of phase I sometime in fall 2005. He informed the Council that there are two key terms: 1) the current rent is slightly over \$25,000 per year and increases by the CPI; and 2) the City currently has the ability to use the facility twice a week from June to November to supplement recreational programming at the aquatics center. He stated that the City is proposing to develop a parking lot on the soccer complex. It is proposed to locate the parking lot on the soccer field closest to the aquatics facility. This would result in the CYSA organization losing the operation of one field. He indicated that CYSA is evaluating the impacts of the loss of the one soccer field. He informed the Council that Rich Pinell with the CYSA organization was in attendance to address this concern. He said that the San Jose Soccer Complex Foundation anticipates being able to complete its facility on the Sobrato site some time in 2006. This being the case, there may be a possibility that Morgan Hill could be without a soccer complex should the Council/Agency decide to approve only a 10-month extension and construct a sports complex prior to the completion of the regional soccer complex on the Sobrato site.

Mayor Pro Tempore/Vice-chair Sellers stated that it was his impression that it would take longer to build the soccer complex next to Sobrato beyond 2006.

Mr. Toy stated that the 2006 date was given as the best case scenario and that it may take longer to build the soccer complex.

Mayor/Chairman Kennedy said that it was his understanding that the Sobrato soccer complex could start construction in August 2006.

Council/Agency Member Carr inquired whether the parking lot would be included in the plans being discussed by the Parks & Recreation Commission for the site or whether this would be a temporary parking lot.

Mr. Toy responded that it was his belief that the parking lot would be interim and that he did not know how it would fit into the future sports complex plan.

Mayor/Chairman Kennedy opened the floor to public comment.

Rich Pinell said that until the Sobrato soccer complex site is built, CYSA believes that its needs would be served well by having the Morgan Hill soccer complex under its control. To turn over the soccer complex to the City at this time creates a burden for it to maintain the facility. He said that CYSA would maintain the fields in a playable condition. He felt that an extension of the agreement would serve both groups well as the City is not ready to build the new sports complex on the facility and the Sobrato soccer complex is not ready to move forward. He said that it will be a while before that facility is ready to use. Even if the Sobrato soccer complex began construction in 2005, it would not be playable until spring 2006. He stated that CYSA would be willing to attempt to negotiate a lease for 10 months or more based on the City's needs in terms of moving forward with the outdoor sports complex. He said that CYSA is open to possibilities. As the fields of the complex go away, the CYSA would be less likely to want to pay the current rate. However, all these points can be worked out. He said that the minimal workable lease is through the end of October 2005/mid-November 2005 as the CYSA spends a lot of money and effort in getting the facility ready for use throughout the year. He stated that it would not make sense to enter into a six-month lease agreement.

Council/Agency Member Carr said that it appears that a 10-month lease makes a lot of sense both in terms of the City's internal planning and the CYSA's need for its playing season. He inquired whether the installation of a parking lot would be manageable or whether the loss of the field would impact CYSA.

Mr. Pinell said that reducing the fields would impact CYSA's revenue stream but that it would not be a deal breaker.

Council/Agency Member Carr expressed concern regarding the down time from when the City wants to develop the site for future uses and when the Sobrato site will be ready for use. He inquired how the City would know that the Sobrato site will be the home for CYSA.

Mr. Pinel said that if the Sobrato site does not work, CYSA would find other places to play. He indicated that CYSA extends from Fresno to the Oregon border and from the coast to the Nevada border. He said that CYSA has started to lock up sites for the late winter/early spring next year. It is already known that the Morgan Hill site will not be used as much as it has been in the past because CYSA had to protect their programs for next year. If CYSA does not have the Morgan Hill site to work with, CYSA will still survive as a "playing organization." He said that he did not believe that the City would be building in the winter of 2005 and that CYSA would want to play on the fields during that time period.

No further comments were offered.

Mayor Pro Tempore/Vice-chair Sellers recommended that the City negotiate a 10-month agreement through next year with the CYSA. He inquired whether there will be an opportunity to lease some of the fields at the existing site. He stated that plans are being reviewed by the Parks & Recreation Commission that include softball/soccer fields as well as other recreational uses. He noted that the City of San Jose is moving at a slow pace and felt that there were a lot of issues to resolve with the Sobrato site. He stated that the City of Morgan Hill's interest is to have a long term relationship with the CYSA and continue to have their significant resources. He felt that it was important to have conversations with CYSA and assist them in returning to the community. He said that there is a significant impact on parking at the aquatics center. Adding parking would be beneficial for the soccer organization as well. He felt that elimination of one soccer field would be minimal. He did not believe that it made sense to significantly change the terms of the lease, staying with the CPI.

Mayor/Chairman Kennedy noted that a 10-month lease would not allow play through mid-November 2005. He inquired whether the duration of the lease should be longer to allow significant play time to occur.

Mr. Pinell stated that he would support a 10-month lease and then talk about a month to month lease, based upon the City's construction plans for the new sports complex. He said that CYSA may have a need for the facility for a few weekends in January and February 2006. Use of the existing soccer fields during this time may be beneficial to all as the CYSA would continue to maintain the facility and the City would not need to take over the maintenance responsibility of mowing the fields. He would agree to a flexible agreement.

Council/Agency Member Carr concurred with a 10-month lease and then a month to month lease thereafter. He said that when the Council has its discussion on the report from the Parks & Recreation Commission, the Council can look at the construction timeline and how construction will be phased. Should the City not be ready to begin construction in Spring 2006 or if construction takes place in phases, there should be discussion about leaving enough fields available for play as this appears to be the time that the CYSA would be most homeless. He felt that keeping the soccer games close to Morgan Hill would be a great advantage.

Council/Agency Member Tate concurred that the City needs to keep in sync in its discussions with CYSA and consider these facts as the City reviews the plans for the sports fields.

Mr. Toy said that staff would like to negotiate the location of a parking lot to be built on the one field closest to the aquatics center.

**Action:**      *On a motion by Council/Agency Member Tate and seconded by Mayor Pro Tempore/Vice-chairman Sellers, the City Council/Agency Board, on a 4-0 vote with Council/Agency Member Chang absent, **Authorized** staff to: 1) negotiate a 10-month lease with a month to month extension; 2) negotiate an agreement that would allow the City to build an extension of a parking lot on the one soccer field closest to the aquatics complex; and 3) terms of the agreement to remain the same.*

## ***City Council and Finance Authority Commission Action***

### **OTHER BUSINESS:**

#### **22. ISSUANCE OF BONDS FOR WATER PROJECTS Resolution Nos. 5849 and MHFA-5**

Finance Director Dilles presented the staff report, including the proposed bond documents for the water project(s). He indicated that Richard Morales, the City's Financial Advisor, was in attendance to answer any questions the Council may have regarding interest rates or the bond structure.

Mayor/President Kennedy opened the floor to public comment.

Mayor Kennedy inquired as to what point the interest rate would be locked in.

Richard Morales informed the Council that the closing date will be October 28 and that interest rates would be locked in at that point. He stated that this would be a 30-year bond. He stated that this is a good time to borrow as the interest rates have been low over the last several years and that they continue to be favorable. He indicated that at this time, an entity can borrow on a 30-year paper for under 5%. He felt that the interest rates will be comparable to that of the police lease revenue bond financing and that it was his belief that rates would be going up in the future.

No further comments were offered.

#### **Acting as City Council:**

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Chang absent, **Adopted** Resolution No. 5849, Approving as to Form and Authorizing the Execution and Delivery of Certain Documents in Connection with the Sale and Issuance of Morgan Hill Financing Authority Water Revenue Bonds.*

#### **Acting as Financing Authority:**

**Action:** *On a motion by Vice-President Sellers and seconded by Commissioner Carr, the Financing Authority Commission, on a 4-0 vote with Commissioner Chang absent, **Adopted** Resolution No. MHFA-5, Authorizing the Issuance, Sale, and Delivery of Water Revenue Bonds and Approving Certain Documents.*

#### **Acting as City Council:**

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Chang absent, **Authorized** the City*



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*Manager, on Behalf of the City, to Enter Into Agreements With RBC Dain Rauscher Inc. for Financial Advisory Services and with Richards, Watson & Gershon for Bond Counsel/Disclosure Counsel Services, Subject to Review and Approval by the City Attorney.*

### **FUTURE COUNCIL-INITIATED AGENDA ITEMS**

No items were identified.

### **RECONVENE TO CLOSED SESSION**

Acting City Attorney McClure announced that the Council would be discussing the City Manager's performance evaluation in closed session.

Mayor Kennedy adjourned the meeting to Closed Session at 8:17 p.m.

### **RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 9:29 p.m.

### **CLOSED SESSION ANNOUNCEMENT**

Mayor/Chairman Kennedy announced that no reportable action was taken in closed session.

### **ADJOURNMENT**

There being no further business, Mayor/Chairman/President Kennedy adjourned the meeting at 9:30 p.m.

### **MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK/  
AGENCY SECRETARY/COMMISSION SECRETARY**